



GOVERNMENT OF INDIA

Chandigarh Administration Gazette

Published by Authority

NO. 011] CHANDIGARH, THURSDAY, JANUARY 23, 2025 (MAGHA 03, 1946 SAKA)

CHANDIGARH ADMINISTRATION
DEPARTMENT OF AGRICULTURE, U.T. CHANDIGARH

ORDER

The 22nd January, 2025

No. SAMB/2025/43-52.—Consequent upon approval accorded by the Hon'ble Administrator, U.T. Chandigarh vide orders dated 20-01-2025, a committee of the following officers, is hereby, constituted for conducting open e-auction of SCO sites in New Grain, Fruit and Vegetable Market, Sector-39, Chandigarh on leasehold basis as per provisions laid down under the Chandigarh Estate Rules, 2007(duly adopted by the Board). Initially, 46 no. of SCO sites in the First Phase of New Grain, Fruit and Vegetable Market, Sector-39, Chandigarh i.e. Fruit and Vegetable Market will be auctioned in the first round :

- a. Administrator, Market Committee, Chandigarh
- b. Joint Secretary, State Agricultural Marketing Board, Chandigarh
- c. Assistant Estate Officer-I, Estate Office, Chandigarh
- d. Technical Director, NIC, U.T. Chandigarh
- e. Assistant Town Planner, Department of Urban Planning, U.T. Chandigarh
- f. Sub Divisional Engineer, State Agricultural Marketing Board, Chandigarh
- g. Section Officer, Estate Office (Auction Branch)
- h. Law Officer, State Agricultural Marketing Board, Chandigarh

Further, the Estate Office, U.T. Chandigarh to render all the assistance to the Board /said Committee for conducting the e- auction, being their domain of expertise.

Dated : 20-01-2025

HARI KALLIKKAT, I.A.S.,
Secretary Agriculture,
Chandigarh Administration.

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Jalinder Kumar
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15:41:46 IST
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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 14th January, 2025

No. 485254-HII(2)-2024/665.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **40/2022** dated **21.11.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RASHPAL KAUR, H.NO.347, PURANI HAVELI, KAJHERI, U.T. CHANDIGARH (Workman)

AND

M/S SATKAR SECURITY PROVIDER PVT. LTD., SHOW ROOM NO.65, 1ST FLOOR, NEAR SHIV MANDIR, KAJHERI, SECTOR 52, U.T. CHANDIGARH THROUGH ITS MANAGING DIRECTOR. (Management)

AWARD

1. Rashpal Kaur, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 01.07.2012 the workman was appointed by the management as Security Guard. The workman remained in the continuous employment up to 31.07.2017. The workman was drawing `6,500/- per month as wages, which were less than the minimum rate of wage applicable to the management. On 31.07.2017, when the workman went to attend her normal duty she was refused work without assigning any reason and notice. The workman then lodged a complaint dated 27.10.2017 with the Labour Inspector, U.T. Chandigarh for her reinstatement. The Labour Inspector fixed a number of dates for an amicable settlement but the case could not be settled before the Labour Inspector, U.T. Chandigarh. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For her reinstatement the workman served upon the management a demand notice dated 07.07.2018. The management neither replied the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer requested for his intervention but the management did not appear before the Conciliation Officer, U.T. Chandigarh on any date fixed for settlement. Therefore, the dispute could not be settled within the stipulated period. Action of the management is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. The workman remained un-employed during the period i.e. from the date of termination to till date. Prayer is made that the workman may be reinstated with full back wages, without continuity of service, without any change in service condition.

3. On notice, the management appeared through its Proprietor and contested the claim of the workman by filing written statement on 20.09.2023 stating that Kulwant Singh Multani is sole Proprietor of the management and well conversant with the facts of the case, thus, competent to file written statement. Further preliminary objections are raised on the grounds that the claim of the workman is time barred and the same is hit by Section 2(3) the Industrial Disputes Act (Amended), 1947 as the workman is said to have joined with the answering management on 01.07.2012 and her services are said to have terminated w.e.f. 31.07.2017 and the demand notice is said to have been served upon management on 07.07.2018 whereas the claim application filed before this Tribunal on 12.05.2022 beyond 3 years without any explanation. There is no relationship of employer &

employee between the parties as the workman is in known relationship of Proprietor Kulwant Singh Multani since very long that is why the workman fraudulently procured documents of the management i.e. her identity card, experience certificate saying that workman is going to be appointed in PGI, Chandigarh as Security Guard for which workman requires experience certificate of Security Guard for her job.

4. On merits, it is stated that the workman was never engaged by the management for the services of Security Guard nor the workman performed anywhere any duties as Security Guard under the management or any other department / office with whom the management had contract to provide manpower. Remaining averments of the claim statement are denied being wrong. Prayer is made that the claim of the workman may be dismissed.

5. The workman filed replication, wherein the contents of written statement except the admitted facts, are denied as wrong and the averments of the statement of claim are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 14.12.2023:-

1. Whether the termination of the services of the workman is illegal ? If so, to what effect and to what relief she is entitled to ? OPW
2. Whether the claim statement is barred by limitation ? OPM
3. Whether there is no relationship of employer and employee between the management and workman ? OPM
4. Relief.

7. In evidence, workman Rashpal Kaur examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A'.

8. During the pendency of present industrial, parties have effected compromise. Kulwant Singh - Proprietor of the management, made a statement on 21.11.2024, which was recorded separately and reproduced as below :-

"Stated that I have effected compromise with the workman. I agree to pay compromise amount of Rs.50,000/- (Rupees Fifty Thousand only) towards full and final settlement in 5 monthly installments. Today, I have handed over following 5 cheques issued in favour of Rashpal Kaur towards payment of compromise amount;

Sr. No.	Detail of cheque	Amount in Rs.
1.	Cheque No.059395 dated 13.12.2024 drawn on State Bank of India	10,000/-
2.	Cheque No.521600 dated 13.01.2025 drawn on Punjab National Bank	10,000/-
3.	Cheque No.521599 dated 13.02.2025 drawn on Punjab National Bank	10,000/-
4.	Cheque No.521598 dated 13.03.2025 drawn on Punjab National Bank	10,000/-
5.	Cheque No.521581 dated 13.04.2025 drawn on Punjab National Bank	10,000/-

After encashment of all the cheques above, there shall not remain any amount outstanding from me to the workman. In case any of the cheque is dishonoured, I shall be liable to pay an amount of Rs.50,000/- along with interest @ 9% p.a. from the due date i.e. 13.12.2024 till actual realisation. Copies of the cheques are placed on record. I shall remain bound by my statement."

9. On the other hand, workman made a statement on 21.11.2024, which was recorded separately and reproduced as below :-

"Stated that I have effected compromise with Proprietor of the management. I have heard the statement of Kulwant Singh - Proprietor got recorded by him today in the court. I agree with the same. Today, I have received 5 post-dated cheques of Rs.10,000/- each from Kulwant Singh as detailed by him in his statement towards full and final settlement. After the encashment of said cheques (total amounting to Rs.50,000/-, Rupees Fifty Thousand only), I shall have no claim against the Kulwant Singh - Proprietor. I shall remain bound by my statement. The present Industrial Dispute Reference may be disposed off being settled on account of compromise."

10. Statement of the workman was counter-signed by her Representative.

11. Heard. In view of the above-mentioned statements of the parties, the present industrial dispute is disposed off being settled on account of compromise. Both the parties shall remain bound by their statements. In view of the compromise, the issues have become redundant and stands decided accordingly. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

Dated : 21.11.2024.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 14th January, 2025

No. 485256-HII(2)-2024/671.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 7/2021 dated **18.11.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PARAMJIT SINGH S/O SH. HAKAM SINGH, R/O HOUSE NO.220, NEAR GUGGA MADI, DADUMAJRA, CHANDIGARH - 160014. (Workman)

AND

1. MUNICIPAL CORPORATION CHANDIGARH (MCC) (THROUGH ITS AUTHORIZED REPRESENTATIVE), ADDRESS: NEW DELUXE BUILDING, SECTOR 17, CHANDIGARH - 160014, INDIA.
2. M/S LOVELY ENTERPRISES (THROUGH ITS OWNER/DIRECTORS/PROPRIETORS/MANAGER), ADDRESS # 183, MILK COLONY, DHANAS, CHANDIGARH - 160014, INDIA. (Management)

AWARD

1. Paramjit Singh, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that respondent No.1 (*here-in-after 'management No.1'*) is principal employer of the workman and it is Government organisation of Union Territory, Chandigarh which provides public services like water to the residents of Chandigarh. The respondent No.2 (*here-in-after 'management No.2'*) is employer of the workman and working as service provider providing manpower to the clients and to the management No.1. The workman was appointed as Tube-well Operator in June, 2014 at Chandigarh by the managements and was assigned the work of Tube-well Operator in the territory of Chandigarh. Hence, the workman is a 'workman' defined under Section 2(s) of the ID Act. The salary given by management No.2 was through cheque. Copy of first salary drawn account statement is enclosed with the claim statement. On 31.12.2019, management No.2 told the workman that his services are no more required by the managements. The personal file, record of leaves etc. of the workman was maintained by both the managements No.1 & 2. While terminating the services of the workman in the manner mentioned above, the managements have utterly violated the various provisions of the ID Act. Neither prior notice was issued to the workman nor he was paid notice pay in lieu of notice period. The workman was being paid ₹ 15,780/- as gross salary after deduction of Provident Fund (PF) and Employees' State Insurance (ESI). The last drawn net salary of the workman was ₹ 15,780/- through cheque. The workman worked last year for 7 days in a week but he had not been given his over-time and bonus for the financial year 2018-19. The work and conduct of the workman while in service was unblemished and satisfactory. Neither any charge-sheet was served to him nor any inquiry was conducted against him for any misconduct during whole tenure of his service. The nature of the work of workman was permanent. The work on which the workman was deputed is still going on as the work is regular work of managements No.1 & 2. The workman has completed 240 days in 12 calendar months preceding his termination. Previously, the workman has submitted demand notice to the managements and before the Assistant Labour Commissioner-cum-Conciliation Officer, U. T. Chandigarh.

Both the managements did not come present in conciliation proceedings. The Conciliation Officer initiated conciliation proceedings in the matter of Industrial Dispute so raised by the workman but ultimately the conciliation proceedings failed. Accordingly, the Conciliation Officer vide Memo No.4167 dated 29.10.2020 advised the workman to refer Section 2(A) of the ID Act (Amendment) Act, 2010 and accordingly, this claim. Prayer is made that managements may be ordered to reinstate the workman with continuity of service along with full back wages and consequential benefits.

3. On notice, management No.1 contested the claim statement by filing written statement dated Nil, filed on 20.07.2021 wherein it is submitted that the written statement is being filed by Shailender Singh, Superintending Engineer, Public Health, MCC, who is duly authorised and competent to sign and verify on behalf of the management No.1 - Municipal Corporation.

4. Further preliminary objections are raised on the ground that the claim statement is liable to be rejected being without any merits. The claim statement is not maintainable qua management No.1. The matter does not come under the Industrial Dispute and this Court has no jurisdiction to entertain any such matter in the present form. There is no employer-employee relationship between the management No.1 and workman, as the workman was never appointed and was never issued any appointment letter by the management No.1. In fact, the workman is employee of management No.2 i.e. M/s Lovely Enterprises and thus, the workman cannot claim anything from management No.1 - Municipal Corporation. Management No.2 i.e. M/s Lovely Enterprises was allotted the work of operation/watch & ward and maintenance of Tube-well Pumping Machinery in various Sectors and Villages of Municipal Corporation vide Memo No.15 dated 01.01.2019. The workman was got deployed by the management No.2 for the aforesaid purpose and was working directly under the control and supervision of management No.2. As per the terms of the work, the persons deployed by the private contractor/management for the allotted work shall be employees of private contractor/management for all intents and purposes and in no case, there shall be any relationship of employer-employee between the Municipal Corporation and the person deployed by the private contractor/management. The work was allotted for a period of one year and the same expired on 31.12.2019. The claim of the workman is without any cause of action.

5. Further on merits, it is stated that Paramjit Singh was working as a purely outsourced Tube-well Operator through private contractor/management i.e. M/s Lovely Enterprises at the fixed D. C. Rates. The tender was allotted to the various private contractors/management including management No.2 for the work of operation/watch & ward and maintenance of Tube-well pumping machinery in various Sector, Colonies and Villages of U. T. Chandigarh as per terms and conditions of the tender from time to time. The workman does not fall within the definition of 'workman'. It is a matter of record that the salary was given to the workman by management No.2 through cheque. The workman was not working under the answering management No.1 and thus, the answering management No.1 could not have terminated the services of the workman. It is denied that there is violation of provisions of the ID Act. As per contract, the management No.2 has paid all the dues pending towards the workman which is evident from letter dated 04.03.2021 wherein it is mentioned by management No.2 that all the full and final payment/salary and arrears to the workman has already been given up to 31.12.2019 and nothing is due against him. The outsourced incumbents including the workman were deployed by the management No.2 and they were being regulated as per terms and conditions of the agreement executed between the contractor and the Executive Engineer, M.C.P.H. Chandigarh. Management No.2 M/s Lovely Enterprises has already mentioned in its letter dated 04.03.2021 that all the full and final payment/salary and arrears to the workman has already been given up to 31.12.2019 and nothing is due against him. It is not the corporation who has removed the contractual employees from service and it is the manpower contractors who have removed them. There is no binding contract between the petitioners and Corporation in terms of judgment rendered by Hon'ble High Court of Punjab & Haryana in Rajiv Kumar & Others case. Further, similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed.

6. Management No.2 contested the claim statement by filing separate written statement dated Nil filed on 25.08.2022 wherein it is stated that the written statement is being filed by Sampooran Singh,

Proprietor of M/s Lovely Enterprises, House No.183, Milk Colony, Dhanas, Chandigarh. The present claim is liable to be rejected as the same is without any merits. The management No.2 has allotted a tender for the work of operation/watch & ward and maintenance of Tube-well pumping machinery in various colonies and Villages of U. T. Chandigarh vide Memo No.15 dated 01.01.2019 by the M.C.C. with the time limit of 12 months which got expired on 31.12.2019. All payment, salary along with arrears through account payee cheques up to 31.12.2019 has already been paid to the workman and nothing is due from the management No.2. The workman was enrolled to EPF and ESIC Account. The workman was deployed as an outsourced Tube-well Operator at RN-6, Village Dadumajra, Chandigarh as per tender allotted on 01.01.2019 by M.C.C. and the same expired on 31.12.2019. The M.C.C. has not allotted the said site tender after 31.12.2019.

7. Workman filed rejoinder dated 17.09.2021 to the written statement of management No.1, wherein the contents of the written statement are denied as wrong and averments of claim statement are reiterated. Rejoinder to the written statement of management No.2 not filed.

8. From the pleadings of parties following issues were framed vide order dated 24.11.2022 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and other consequential benefits, as prayed for ? OPW
3. Whether there is a relationship of employee and employer between the workman and the management No.1 ? OPW
4. Whether the present Court has no jurisdiction to entertain and decide the present claim application ? OPM (management No.1)
5. Whether the claim application is not maintainable ? OPM (management No.1 & 2)
6. Relief.

9. In evidence, workman Paramjit Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W8'.

Exhibit 'W1' is copy of statement of account No.51272121006993 for the period 01.01.2014 to 03.12.2020 maintained with Oriental Bank of Commerce, Branch Sector 41-D, Chandigarh.

Exhibit 'W2' to Exhibit 'W8' are photocopies of account payee cheque No.010563 dated 06.06.2014 for sum of ₹ 7,915/-, cheque No.013113 dated 07.08.2014 for sum of ₹ 7,915/-, cheque No.031985 dated 07.01.2015 for sum of ₹ 8,500/-, cheque No.018917 dated 08.02.2015 for sum of ₹ 7,915/-, cheque No.024415 dated 07.07.2015 for sum of ₹ 8,499/-, cheque No.025665 dated 07.08.2015 for sum of ₹ 8,499/- and cheque No.035436 dated 07.04.2016 for sum of ₹ 9,603/- all drawn on Oriental Bank of Commerce from Account No.51101131001455 in favour of Paramjit Singh towards payment of monthly wages respectively.

Exhibit 'W9' to Exhibit 'W14' are photocopies of account payee cheque No.043742 dated 07.10.2016 for sum of ₹ 9,603/-, cheque No.043797 dated 28.10.2016 for sum of ₹ 9,603/-, cheque No.049718 dated 07.02.2017 for sum of ₹ 9,603/-, cheque No.052241 dated 01.05.2017 for sum of ₹ 10,220/-, cheque No.052193 dated 07.03.2016 for sum of ₹ 9,603/- and cheque No.045246 dated 07.01.2017 for sum of ₹ 9,603/- all drawn on Oriental Bank of Commerce from Account No.51101131001455 in my favour towards payment of monthly wages respectively.

10. On 01.08.2024, Learned Representative for the workman closed evidence in affirmative.

11. On the other hand, management No.1 examined MW1 Ashok Kumar, J. E., MCPH, Division No.3, Sub-Division No.11, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Exhibit 'MW1/1' to Exhibit 'MW1/2' (original of Exhibit MW-1/1 and Exhibit MW-1/2 are seen and returned).

Exhibit 'MW1/1' is copy of tender allotment letter bearing Memo No.15 dated 01.01.2019.

Exhibit 'MW1/2' is letter dated 04.03.2024 written by M/s Lovely Enterprises to Sub Divisional Engineer, MCPH, Sub-Division No.11, Chandigarh.

12. Shri Sampooran Singh, Proprietor of M/s Lovely Enterprises -management No. 2 examined himself as MW2 and tendered his affidavit Exhibit 'MW2/A' along with copies of documents Exhibit 'MW2/1' to Exhibit 'MW2/4'.

Exhibit 'MW2/1' is copy of letter bearing Endorsement No.14626-31 dated 31.12.2019 regarding allotment of tender to M/s Plus Point Cooperative L & C Society Ltd.

Exhibit 'MW2/2' to Exhibit 'MW2/4' are copy of letter bearing Endorsement No.884-89 dated 29.01.2021, letter bearing Endorsement No.2108-13 dated 12.03.2022, letter Memo No.E1429160 dated 29.02.2024 issued from Executive Engineer, MCPH, Division No.3, regarding allotment of tender to M/s Lovely Enterprises, Chandigarh respectively.

13. On 18.10.2024, Learned Representative for the managements No.1 & 2 closed oral evidence. On 18.11.2024, Learned Representative for the managements No.1 & 2 closed documentary evidence.

14. I have heard the arguments of Learned Representatives for the parties and perused judicial file. My issue-wise findings are as below :-

Issues No. 1 to 3 :

15. All these issues are taken up together being interconnected and in order to avoid repetition of discussion. Onus to prove all these issues is on the workman.

16. Under these issues the workman Paramjit Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W14'.

17. On the other hand, to controvert the evidence led by the workman, management No. 1 examined MW1 Ashok Kumar, J.E, who vide his affidavit Exhibit 'MW1/A' deposed all the material content of written statement of management No. 1 which are not reproduced here in order to avoid repetition. MW1 supported his oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/2'.

18. MW2 Sampuran Singh - Proprietor of M/s Lovely Enterprises - management No. 2 examined himself as his own witness and vide his affidavit Exhibit 'MW2/A' deposed all the contents of written statement of management No.2 which are not reproduced here in order to avoid repetition. MW2 supported his oral version with documents Exhibit 'MW2/1' to Exhibit 'MW2/4'.

19. From the oral as well as documentary evidence led by the parties, it comes out that workman was appointed in June, 2014 by the contractor - M/s Lovely Enterprises and was deputed as an outsource employee with the M.C. - management No.1. In this regard MW2 when put to cross examination stated that workman joined in the year 2014 but he cannot say if he joined in the month of June in year 2014. MW2 further stated that the workman worked up to 31.12.2019 except in the year 2016. In the year 2016, the contractor was allotted by the M.C. to some other contractor. After a gap of 4 months in the year 2016, the service of the workman with his company was continuous up to 31.12.2019. The aforesaid version of MW2 would prove that the workman remained in continuous employment of management No.2 w.e.f. June, 2014 up to 31.12.2019 except 4 months in the year 2016, and in that 4 months the workman was deployed with management No.1 by

the contractor other than management No.2. During entire period of his service from June, 2014 to 31.12.2019 the workman was deployed with M.C. - management No. 1. Thus, the contractor / management No.2 is the actual employer and M.C. - Management No. 1 is principal employer.

20. The question before this Court is whether the workman engaged in the management No. 2 - M.C, through contractor can be treated as employee of the principal employer i.e. M.C. In view of the observations of Hon'ble Supreme Court in *Bengal Nagpur Cotton Mills Versus Bharat Lal*, (2011) 1 SCC 635, *International Airport Authority of India Versus International Air Cargo Worker's Union*, (2009) 13 SCC 374 and *Workmen of Nilgiri Coop. Mkt. Society Ltd. Versus State of T.N.*, (2004) 3 SCC 514, it can be concluded that the relevant factors to be taken in to consideration to establish an employer-employee relationship would include, inter alia :-

- (i) who appoints the workers;
- (ii) who pays the salary / remuneration;
- (iii) who has the authority to dismiss;
- (iv) who can take disciplinary action;
- (v) whether there is continuity of service; and
- (vi) the extent of control & supervision i.e. whether there exists complete control and supervision.

21. As regards, extent of control & supervision is concerned, the judgment referred by Learned Representative for the management No.1 titled as *Balwant Rai Saluja & Another Versus Air India Limited & Others* reported in *SCC 407, 2015 SC* is applicable to the facts of the present case to an extent wherein para 57 it is observed as below :-

"57. Further, the above case made reference to the case of the *International Airport Authority of India case (supra)* wherein the expression 'control and supervision' in the context of contract labour was explained by this Court. The relevant part of the *International Airport Authority of India case (supra)*, as quoted in *Bengal Nagpur Cotton Mills case (supra)* is as follows:

"38.if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

22. In the present case AW1 in cross-examination admitted as correct that he was engaged by M/s Lovely Enterprises. The M.C. Chandigarh did not public any post of Tube-well Operator, as there was no post in Municipal Corporation, Chandigarh. AW1 admitted as correct that he was not issued any appointment letter by MC, Chandigarh. AW1 in his cross-examination voluntarily stated that he was appointed by M/s Lovely Enterprises - management No.2 and was deployed with Municipal Corporation, Chandigarh - management

No.1. AW1 admitted as correct that he was paid wages by management No. 2. AW admitted as correct that he was never paid anything either in cash or through cheque by management No.1. It is undeniable fact workman was covered under the ESI and EPF Scheme by the management No.2 and his service were dispensed with on completion of contract period / tender period on 31.12.2019. The aforesaid version of AW1 would suggest that contractor - management No. 2 was responsible to pay monthly wages, provident fund contribution and Employee's Insurance. Thus, the contractor management No.2 is the actual employer of the workman. There is no direct relationship of employer-employee between the management No.1 and workman.

23. As far as the question of termination of service of the workman are concerned, as discussed above, the workman remained in continuous employment of management No.2 except 4 months in year 2016, w.e.f. June, 2014 to 31.12.2019. Thus, workman has completed continuous service of 240 days in 12 calendar months preceding termination as required under Section 25B of the ID Act. Once the requirement of Section 25B of the ID Act is fulfilled then the provision of Section 25F of ID Act is attracted which lays down certain conditions precedent to terminate the services of a workman. It would be apposite to reproduce Section 25F of the ID Act :-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

24. In the present case, the management No.2 has taken the plea that on expiry of contract period on 31.12.2019 the service of the workman stands dispensed with. The workman has been paid his full salary up to 31.12.2019. MW2 in his cross examination stated that the services of the workman were dispensed with on 31.12.2019 on completion of contract period of that time. The aforesaid plea taken by management No.2 is not justified because it is not the case of management No.2 that after 31.12.2019, MC - Management No. 1 did not allot further tender to management No. 2 - M/s Lovely Enterprises. In this case Exhibit 'MW1/1' is the allotment of tender by M.C. - management No. 1 to M/s Lovely Enterprises - management No. 2 for the period w.e.f. 01.01.2019 for 12 months i.e. 31.12.2019. Exhibit 'MW2/1' is the allotment of contract by M.C. - management No. 1 to M/s Plus Point Co-operative L&C Society Limited for the period 01.01.2020 to 31.12.2020. By producing Exhibit 'MW2/1' into evidence, the management No.2 has tried to show that after expiry of term of contracts on 31.12.2019, the contract for the further period was allotted to some other contractor and concealed the fact that apart from M/s Plus Point Co-operative L&C Society Ltd., contract from the period w.e.f. 01.01.2020 to 31.12.2020 was allotted to him also. When put to cross-examination by the workman MW2 brought on record Exhibit 'MW2/5', which is allotment of contract for the period 01.01.2020 to 31.12.2020 by the M.C. - management No.1 to the M/s Lovely Enterprises - management No. 2. In this regard MW2 in his cross-examination admitted as correct that contract for the period 01.01.2020 to 31.12.2020 was allotted to M/s Lovely Enterprises apart from the contract of said period, which was allotted to M/s Plus Point Co-operative L&C Society Ltd. and he can produce the copy of allotment of contract from 01.01.2020 to 31.12.2020 to his company M/s Lovely Enterprises and same is Exhibit 'MW2/5'. MW2 admitted as correct that after 31.12.2020, M.C. has continuously allotted contract to his company. In view of the aforesaid version of MW2, dispensing of service of the workman on expiry of contract period on

31.12.2019 is totally unjustified because the M.C. - management No.1 allotted the contract of further period also to management No. 2.

25. Next explanation offered by the management No.2 is that the tube-well on which the workman was deputed turned dry. Earlier he was having contract of 36 tube-well in MC but w.e.f. 01.01.2020 he has contract of only 35 tube-wells in MC due to which the services of the workman were dispensed with w.e.f. 31.12.2019. Even the aforesaid plea taken by management No.2 is unjustified because first the appoint of the workman was not on the tube-well which allegedly turned dry. In case the number of contract staff was required to be reduced on account of the fact that one tube-well (tube-well of Dadumajra) has turned dry then the contractor was to follow the principle of 'last come first go', but the same is not followed. It is neither pleaded nor proved that workman was the junior most employee of the contractor. It is also not case of the management No.2 that workman was engaged as Tube-well Operator only for the Tube-well at Dadu Majra, which was turned dry. In this regard, MW2 in his cross-examination stated that initially the workman was engaged as Tube-well Operator and later on as per the requirements of M.C., his designation was changed to Multi-task worker. MW2 voluntarily added that during tenure of his service, the workman had discharged the duty of Tube well operator. The workman was deputed at Dhanas, Dadu Majra and Sector 21, Chandigarh during tenure of his service as Tube Well Operator. From the aforesaid version of MW2 it is proved that the workman during his service was posted at different tube-wells i.e. at Dhanas, Dadu Majra and Sector 21, Chandigarh. MW2 stated that he does not know about the seniority of the workers, who are presently working with M.C. on contract basis. He cannot say if any worker junior to the workman is presently working as contractual employee under M/s Lovely Enterprises. The aforesaid version of MW2 would prove that he has denied the knowledge of the seniority of contractual workers engaged by him for deployment with M.C. There is no specific denial to workman's plea that junior to him are still retained in service by the contractor-management No.2. The fact, which is not specifically denied is deemed to be admitted under the law. MW2 in cross-examination stated that he cannot produce the record of wage register, attendance register for the period w.e.f. June, 2014 to 31.12.2019. Volunteer statement of MW2 that the record was stolen in the year 2015-16 does not stand proved as no DDR was lodged for the alleged theft of the record and no such plea is taken either in the written statement of management No.2 or affidavit Exhibit 'MW2/A'. The material record of wage register and attendance register of the year 2015-16 has been withheld by the management No.2, so that seniority of the contractual workers including the workman may not be proved on record. Non-production of the wage register and attendance register for the year 2015-16 raises strong presumption against the management No.2. Under these circumstances, dispensing with the service of the workman by retaining his junior in service is violation of Section 25G of the ID Act and violation of principle of 'first come last go'.

26. Before terminating the service of the workman, the management No.2 did not comply with mandatory conditions laid down in Section 25F of the ID Act. MW2 in his cross-examination stated that he did not issue any prior notice or offered notice pay in lieu of notice period to the workman for want of knowledge of the facts that he has been relieved from service. He has not paid retrenchment compensation to the workman. From the aforesaid version of MW2, it proved that management No.2 while terminating the services of the workman on 31.12.2019 has violated Section 25F of the ID Act.

27. In view of the discussion made above, termination of services of the workman w.e.f. 31.12.2019 is illegal being in violation of Section 25F and 25G of the ID Act and the same is hereby set aside. In affidavit Exhibit 'MW2/A', MW2 placed on record the tenders allotted to his company by the Executive Engineer, MCPH, Division No.3, Chandigarh from 2020 to 2024 vide Exhibit 'MW2/1' to Exhibit 'MW2/4'. Exhibit 'MW2/4' is for the period of to be reckoned w.e.f. 01.03.2024 to 28.02.2025. In view of the subsisting contract Exhibit 'MW2/4' between the management No.1 & 2, the workman is ordered to be reinstated with management No.2, with continuity of service and 50% back wages with all consequential benefits.

28. Accordingly, issue No.1 & 2 are decided in favour of the workman and against management No.2. Issue No.3 is decided against the workman and in favour of the management No.1.

Issues No. 4 & 5 :

29. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

30. Onus to prove issue No.4 is on the management No.1 and onus to prove issues No.5 is on the management No.1 & 2.

31. The workman was appointed by the management No.2 which is operating as Chandigarh and was deployed with management No.1 i.e. M.C., Chandigarh. During tenure of his services the workman remained posted in the area of Dhanas, Dadu Majra and Sector 21, Chandigarh. At the time of termination of the services of the workman, he was employed at Dadu Majra, (U.T. Chandigarh). The management No.2 - contractor is the actual employer of the workman. The contractor-establishment falls within the definition of 'industry' as defined under Section 2(j) of the ID Act. Thus, this Court is well within its jurisdiction to try and decide the present case. The workman on aggrieved from termination of his services in an illegal manner was left with no other option than to raise industrial dispute by issuing demand notice. On failure of conciliation proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh vide his failure report bearing Memo No.4167 dated 29.10.2020, the workman was advised to approach the appropriate forum for adjudication of his dispute as per the provisions of Section 2A(2) of the ID Act. Thereafter, the workman has present Industrial Dispute Reference on 11.01.2021 with a valid cause of action and locus standi. I do not find any defect so far maintainability of the present claim statement / industrial dispute reference is concerned.

32. Accordingly, issue No.4 is decided against management No.1 and in favour of the workman. Issue No.5 is decided against the managements No.1 & 2 and in favour of the workman.

Relief :

33. In the view of foregoing finding on the issues No.1, 2, 4 & 5 above, this Industrial Dispute Reference is allowed. The workman is ordered to be reinstated with management No.2, with continuity of service and 50% back wages with all consequential benefits. The management is directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this Award till it's actual realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

Dated : 18.11.2024.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Surjan, Son of Ram Bhuj, Resident of House No. 464, Small Flats, Maloya, Chandigarh, hereby inform that my father's name is incorrectly recorded as Parbhu Dayal on my PAN card. The correct name is Ram Bhuj, as mentioned on my Aadhar card.

[134-1]

I, Ram Jatan S/o Baliram R/o 183, Dhanas, Chandigarh, declare that my name is Ram Lochan S/o Bal Ram as per the records and documents. But by mistake my name has been mention as Ram Lochan, instead of "Ram Jatan". I shall be known as Ram Jatan in all official and private records to declare my change of name and to ensure that it is reflected in all my future records. I shall ensure all my documents, records and identifications are update to reflected my name Ram Jatan.

[135-1]

I, Kamla Devi D/o Dhani Ram W/o Baldev Raj Dhiman # 208, Palsora, Chandigarh, have changed my name to Sapna Dhiman.

[136-1]

I, Harkesh S/o Lachman Dass # 3102, Sector 32-D, Chandigarh, have changed my name to Rakesh Kumar.

[137-1]

I, Udayvir Son of Krishan Resident of House No. 6745, Sector 56, Chandigarh, have changed my name from Udayvir to Uadyvir.

[138-1]

I, Sumer S/o Satpal R/o # 273/1, Pipliwala Town Manimajra, Chandigarh, have changed my son name from Jashan to Jashan Sheokand.

[139-1]

I, Hitherto known as Harmail Singh S/o Maghar Singh, Residing at House No. 2773, Sector 49-D, Chandigarh-160047, India have changed my name and shall hereafter be known as Harmail Singh Bhatti.

[140-1]

I, Rita Rani Vinayak W/o Pawan Kumar Vinayak, R/o # 1724/2, Sector 39-B, Chandigarh, have changed my minor daughter's name from Srishti to Srishti Vinayak.

[141-1]

I, Hari Babu S/o Sh. Pratap Singh R/o # 5, Makhan Majra, Chandigarh, have changed my name from Hari Babu to Shri Harish Kumar.

[142-1]

I, Kunwar Pardeep S/o Pardeep Singh R/o House No. 2235, Star Enclave, Sector 48-C, Chandigarh, have changed my name from Kunwar Pardeep to Kunwar (First Name) and Pardeep (Last Name). Concern please note.

[143-1]

I, Madhu W/o Pawan Kumar # 3025, Housing Board Colony, Dhanas, Chandigarh, have changed my name to Madhu Bala.

[144-1]

I, Aman S/o Manoj Kumar R/o # 6032, Maloya Colony, UT Chandigarh, have changed my name from Aman to Aman Kumar.

[145-1]

I, Dharminder Kumar Son of Sh. Chakradhri Tiwari Resident of House No. 2043, Pipliwala Town Manimajra, Chandigarh, have changed my name from Dharminder Kumar to Dharminder Tiwari.

[146-1]

I, Charanjit Singh S/o Tirath Singh Manku R/o H. No. 431/1, Sector 41-A, Chandigarh, changed my name to Charanjit Singh Manku.

[147-1]

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